

**FILED**

**MAY 14 2008**

**PATRICK E. DUFFY, CLERK**

**By** DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

STEVEN SHANE MCCANN,	)	CV 08-24-H-DWM-RKS
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
MONTANA STATE PRISON, et al.,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff McCann, a state prisoner proceeding pro se, has filed a Complaint under 42 U.S.C. § 1983 alleging violations of his constitutional rights stemming from prison officials' refusal to honor his request to be placed in protective custody due to threats he has allegedly received from prison staff and other inmates.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any

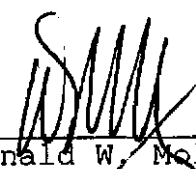
portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Strong issued Findings and Recommendations in which he recommends dismissal of the Complaint without prejudice for failure to exhaust administrative remedies. Judge Strong notes that while Plaintiff concedes in his Complaint that he filed no administrative grievance, Montana State Prison has a detailed grievance procedure that must be exhausted before the Plaintiff's claims can proceed in this Court.

Plaintiff McCann did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 6) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED WITHOUT PREJUDICE for failure to exhaust administrative remedies.

DATED this 14<sup>th</sup> day of May, 2008.

  
\_\_\_\_\_  
Donald W. Molloy, District Judge  
United States District Court